MONTANA LEGISLATIVE HISTORY

Chapter 62 1981

Bill H _____ S 63 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	3-4	C	Hearing Date(s)	1-13	C
		C		1-19	C
		C			C
		C			C
Date Out	3-4	C	DATE OUT	1-19	

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

REPORT: 1/13, DO PASS
2ND READING: 1/15, DO PASS
3RD READING: 1/17, YEAS: 45; NAYS: 0

TRANSMITTED TO HOUSE: 1/17
REFERRED TO COMMITTEE ON NATURAL RESOURCES: 1/19
HEARING: 1/26
REPORT: 1/28, BE CONCURRED IN
2ND READING: 2/5, ON MOTION, PASSED FOR THE DAY.
ON MOTION, 2/5, PASSED CONSIDERATION UNTIL THE 46TH LEGISLATIVE DAY.
2ND READING: 3/2, YEAS: 91; NAYS: 0
3RD READING: 3/4, YEAS: 94; NAYS: 5

RETURNED TO SENATE: 3/4
TRANSMITTED TO GOVERNOR: 3/10/81
ACTION SIGNED: 3/11/81
CHAPTER 31

SB 63 -- TO CONFORM THE STATUTES REGARDING AMENDMENT OF CHARGES IN CRIMINAL CASES TO CASE LAW.
PREFILED AND REFERRED TO COMMITTEE ON JUDICIARY: 12/30/80
HEARING: 1/13
REPORT: 1/20, DO PASS
2ND READING: 1/28, DO PASS AS AMENDED
3RD READING: 1/26, YEAS: 49; NAYS: 0

TRANSMITTED TO HOUSE: 1/26
REFERRED TO COMMITTEE ON JUDICIARY: 1/27
HEARING: 3/4
REPORT: 3/4, BE CONCURRED IN
2ND READING: 3/5, YEAS: 88; NAYS: 0
3RD READING: 3/7, YEAS: 93; NAYS: 2

RETURNED TO SENATE: 3/7
TRANSMITTED TO GOVERNOR: 3/11/81
ACTION: 3/16, SIGNED
CHAPTER 62

SB 64 -- ELLIOTT -- TOTAL DISABILITY COMPENSATION BENEFITS TERMINATE WHEN....
INTRODUCED: 1-6
REFERRED TO COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS: 1/6
HEARING: 1/13
REPORT: 1/14, DO PASS
RE-REFERRED TO COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS: 1/17
HEARING: 1/29
REPORT: 2/10, DO PASS
2ND READING: 2/12, YEAS: 26; NAYS: 16
3RD READING: 2/14, YEAS: 28; NAYS: 21

TRANSMITTED TO HOUSE: 2/14
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 2/16
HEARING: 3/10
REPORT: 3/19, BE CONCURRED IN
ON MOTION, 3/26, PASSED FOR THE DAY.
ON MOTION, 3/27, PASSED CONSIDERATION TO 71ST LEGISLATIVE DAY.
2ND READING: 4/2, ON MOTION, PASSED FOR THE DAY.
3ND READING: 4/3, YEAS: 51; NAYS: 46

SENATE BILL NO. 63

INTRODUCED BY MAZUREK

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM THE STATUTES REGARDING AMENDMENT OF CHARGES IN CRIMINAL CASES TO CASE LAW; AMENDING SECTIONS 46-11-403 AND 46-17-101, MCA."

Section 1. Section 46-11-403, MCA, is amended to read:

"46-11-403. Amending the ~~charge~~ information. (1) ~~(a) A charge~~ An information may be amended ~~once~~ in matters of substance at any time not less than 5 days before trial ~~without~~ with leave of court.

~~(b) When the prosecution seeks leave to amend an information as to a matter of substance, the prosecuting attorney shall file:~~

~~(i) a motion for leave to amend stating the nature of the proposed amendment;~~

~~(ii) a copy of the proposed amended information; and~~

~~(iii) an affidavit in compliance with 46-11-201(1), stating facts sufficient to show the existence of probable cause to support the charge as amended;~~

~~(c) If the motion is timely and the amended information is supported by probable cause, the court shall grant leave to amend.~~

~~(d) The defendant shall be arraigned on the amended information without unreasonable delay.~~

~~(e) The defendant shall have a reasonable period of time to prepare for trial on the amended information.~~

(2) The court may permit ~~any charge~~ an information to be amended as to form at any time before verdict or finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

(3) No charge ~~shall~~ may be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant."

Section 2. Section 46-17-101, MCA, is amended to read:

"46-17-101. Initiation of proceedings -- ~~amending the complaint~~. (1) In justices' and city courts, all criminal prosecutions must be commenced by complaint under oath.

~~(2) The complaint may be amended at any time before verdict or finding with leave of court.~~"

-End-

LC 0648/01

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 8	1/05/81	1/06/81	1/08/81	1/08/81					
SB 10	1/06/81	1/14/81	1/19/81		1/19/81				
SB 14	1/05/81	1/09/81	2/07/81			2/07/81			
SB 24	1/05/81	1/09/81	2/02/81			2/02/81			
SB 27	1/05/81	1/06/81	1/08/81			1/08/81			
SB 29	1/05/81	2/12/81	2/14/81			2/14/81			
SB 33	1/13/81	1/21/81 1/27/81 2/11/81	2/18/81			2/18/81			
SB 36	1/05/81	1/08/81	1/08/81	1/08/81					
SB 38	1/05/81	1/12/81	2/04/81			2/04/81			
SB 40	1/05/81	1/09/81	1/15/81		1/15/81				
SB 43	1/05/81	1/12/81	1/13/81	1/13/81					
SB 45	1/05/81	1/15/81	1/19/81		1/19/81				
SB 57	1/16/81	2/05/81	2/11/81			2/11/81			
SB 63	1/05/81	1/13/81	1/19/81	1/19/81					
SB 75	1/08/81	1/12/81	1/13/81	1/13/81					
SB 76	1/08/81	1/13/81	1/19/81		1/19/81				

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 13, 1981

The fifth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 63:

AN ACT TO CONFORM THE STATUTES REGARDING AMENDMENT OF CHARGES IN CRIMINAL CASES TO CASE LAW.

Senator Mazurek, representing District 16, introduced the bill at the request of the Attorney General. Citing the case of State vs. Cardwell (reference Exhibit A, attached to these minutes), Chris Tweeten, from the Attorney General's office, spoke in support of conforming Montana's statutes with case law, as did Tom Honzel, of the County Attorney's office.

There were no opponents, and no questions.

CONSIDERATION OF SENATE BILL 76:

AN ACT AMENDING SECTION 19-5-103, MCA, TO PERMIT A RETIRED JUDGE OR JUSTICE TO SUSPEND PAYMENT OF HIS BENEFIT ALLOWANCE UNDER THE JUDGES' RETIREMENT SYSTEM AND NOT BE SUBJECT TO A CALL FOR DUTY DURING THIS SUSPENSION.

This bill was sponsored by Senator Crippen, of Billings, Senate District 33. He stated that he could think of three reasons why a judge might want to suspend his retirement -- because of tax ramifications; to get another job which might make him subject to the criticism of double dipping; or if he just didn't want to be a judge anymore.

Questions centered around problems which might be caused by a judge's deciding to elect in and out of the retirement program as his needs changed, whether this might cause a shortage of judges available to hear water rights adjudications, and whether or not the bill really was needed. In summation, Senator Crippen stated that there probably was a need for its passage, to clarify and codify into statute that which is

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 1/13/81

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

Exhibit A

Legislation
CT/bjw

MEMORANDUM

8 January 1981

TO: Senator Joe Mazurek

FROM: Chris Tweeten

RE: SB 63

In State v. Cardwell, ____ Mont. ____, 609 P.2d 1230 (1968), the Montana Supreme Court held that the provision of section 46-11-403(1), MCA, allowing substantive amendments to informations without leave of court, violated Article II, Section 20 of the 1972 Montana Constitution. The Court found that leave of court was a constitutional condition to a substantive amendment of an information and established procedures for complying with the constitutional mandate. 609 P.2d at 1233. SB 63 codifies these procedures.

The major function of leave of court is to assure that the amended charge is supported by probable cause. SB 63 meets this need by requiring the prosecutor to support his amended information with an affidavit stating facts showing the existence of probable cause, and requiring the judge to find probable cause before granting leave to amend. The second procedure established by the Court involves notice. The Court held that a defendant must have sufficient time to prepare for trial and that he must be arraigned on the amended information. New subsections (d) and (e) of section 46-11-403 satisfy this requirement.

The bill provides two other departures from present law. The statute currently allows one substantive amendment without leave of court. It is unclear whether subsequent amendments are permissible with leave of court, since the statute is silent on the matter. The amendment in SB 63 strikes the work "once" from the statute, allowing multiple substantive amendments if the procedures set forth in the statute are followed. This seems reasonable, since the notice procedures and the requirement that the defendant be given a reasonable time to prepare eliminate the possibility of prejudice.

(5)

SB 63 also creates explicit authority to amend complaints in justice and city court proceedings. Current section 46-11-403 applies to amending a "charge", whether brought by information, complaint, or, presumably, indictment. Cardwell establishes that special constitutional constraints apply to informations and not complaints. It therefore is proper to limit the Cardwell procedures to informations and provide a separate authorization for amending complaints. Bill Section 2 amends the statute dealing with complaints to allow a complaint to be amended on motion with leave of court at any time before the jury returns its verdict. The defendant's rights are safeguarded in such a case through the leave of court requirement and the availability of a trial de novo on appeal in district court. This approach also conforms with the actual practice followed by most prosecutors in justice and city court proceedings.

The primary purpose of this bill is to give prosecutors and judges some guidance in applying Cardwell. We feel that the existence of an unconstitutional statute on the book only invites confusion. Since the legislature has adopted a criminal procedure code, it should reflect the procedures actually followed.

NAME: Tom Hosch DATE: 1-12-21

ADDRESS: Helena

PHONE: 443-2554

REPRESENTING WHOM? County Attorneys

APPEARING ON WHICH PROPOSAL: SB 62 SJR 2

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 19, 1981

The eighth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 111:

AN ACT TO AMEND THE DRIVING UNDER INFLUENCE LAWS BY PROVIDING THAT QUALIFIED PERSONS ACTING UNDER THE SUPERVISION AND DIRECTION OF A PHYSICIAN OR A REGISTERED NURSE MAY WITHDRAW BLOOD FOR THE PURPOSE OF DETERMINING ALCOHOL CONTENT UNDER THE IMPLIED CONSENT LAW; BY EXTENDING PROTECTION FROM CIVIL OR CRIMINAL LIABILITY TO SUCH PERSONS; AND BY CHANGING "INTOXICATING LIQUOR" TO "ALCOHOL".

Senator Stimatz, District 43, Butte, introduced the bill at the request of the Department of Justice. Beer and wine are currently excluded from the definition of "intoxicating liquor", which is why he feels the term should be changed to "alcohol." Additionally, he suggests that qualified persons, such as laboratory technicians, be allowed to take blood samples to determine alcohol level of the blood. Senator Stimatz offered an amendment to the bill to amend the title on Page 1, line 11, by adding "by changing the reference to the rule-making body" after "persons"; and also to amend line 3 on page 6 after "the" by deleting "state board of health and environmental sciences" and inserting "Division of Forensic Sciences".

Speaking briefly in favor of the bill were Captain Walt Miller, of the Montana Highway Patrol; Chad Smith, of the Montana Hospital Association; Tom Honzel, for the County Attorneys Association; and David Lackman, lobbyist for the Montana Public State Health Association. Mr. Lackman presented written testimony (marked Exhibit A and attached to these minutes).

Senator Mazurek asked if even broader language in determining

who was qualified to draw a blood sample might be helpful. Larry Majerus, from the Montana Department of Justice, stated that the main intent was to allow the medical technicians to be included, not to take the process out of the hospital environment where such qualified persons would not be available. He added that in an "on the highway" situation away from a hospital there were other techniques available, such as breath analysis.

CONSIDERATION OF SENATE BILL 112:

AN ACT TO AMEND SECTION 49-3-303, MCA, TO REQUIRE EXHAUSTION OF ADMINISTRATIVE REMEDIES BEFORE THE COMMISSION FOR HUMAN RIGHTS PRIOR TO BRINGING SUIT IN DISTRICT COURT FOR ALLEGED UNLAWFUL DISCRIMINATION.

Senator Tveit, District 27, presented the bill on behalf of the School Board Association. He distributed copies of his testimony (marked Exhibit B and attached to these minutes) which he read aloud.

Chad Smith, representing the Montana School Boards Association, also spoke on behalf of the bill, stating that there has been a number of charges filed before the Human Rights Commission, only to find that they were also being filed independently in district court. This is a duplication of proceedings and a waste of effort, as well as a form of harrassment against some small entity which is forced to defend itself against two proceedings at the same time. This means double cost to the taxpayers.

John Frankino, Chairman of the Human Rights Commission, said that their concern with this area of the law has been registered in Senate Bill 56, also under consideration. A fact sheet relative to this bill was submitted (marked Exhibit C, and attached to these minutes).

Karen Townsend, a four-year member of the Human Rights Commission said that SB 112 conflicts with SB 56, which in her opinion is a better bill because it does not preclude the plaintiff's filing in district court if the administrative proceeding has not progressed adequately at the end of six months.

Senator S. Brown suggested that this committee hold this bill and that Senate Bill 56 be referred to the Senate Judiciary Committee, so the two bills can be studied together.

DISPOSITION OF SENATE BILL 63:

Senator S. Brown recommended DO PASS, with the understanding

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date _____

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 19 19 31

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 63

Respectfully report as follows: That SENATE Bill No. 63

DO PASS

Mike Anderson
Chairman.

STATE PUB. CO.
Helena, Mont.

JUDICIARY COMMITTEE

47th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
38	To revise Montana's probate code.	2/10/81	Turnage	3/4/81	Do Pass 3/5/81	3/5/81
43	Shifting the burden of proof for suppression of confessions or admissions in criminal cases; amending section 46-13-301, MCA.	1/19/81	S. Brown	3/4/81	Do Pass 3/5/81	3/5/81
57	To amend laws on discrimination in housing.	2/18/81	B. Brown	3/19/81	Do Pass 3/19/81	3/19/81
63	To conform the statutes regarding amendment of charges in criminal cases to case law.	1/27/81	Mazurek	3/4/81	Do Pass 3/5/81	3/5/81
75	Amending 2-9-303 authorizing district courts to approve compromise settlements against the state.	1/17/81	S. Brown	3/4/81	Do Pass 3/5/81	3/5/81
83	Establishing crime of failure to return rented personal property.	1/26/81	Mazurek	3/4/81	Do Pass as Amnd. 3/5/81	3/5/81
		3/11/81			Do Pass as Amnd. 3/13/81	3/13/81

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 4, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. by Chairman Kerry Keyser in Room 437 of the Capitol. All members were present. Jim Lear, Legislative Council, was present.

SENATE BILL 38 SENATOR TURNAGE, chief sponsor, stated the purpose of the bill is to revise the Montana Probate Code. This bill will improve the function and operation of the code as it simplifies probate.

Pages 1-5 make it clear how an heir to an estate can disclaim the inheritance. If a person died and his spouse did not want the inheritance, the children could take it without going through the living spouse's estate. Page 5, section 2 deals with succession. It intends to shorten the number of people who would succeed to an estate if the deceased did not leave a will.

Section 3, page 7 deals with establishing parent-child relationship. It brings the Parentage Act and Uniform Probate Code together. Page 8 of the bill lists a new section that states the person who is related through two lines of relationship is entitled to only the larger share. This is possible because of mixed marriages where a person could claim two shares. Also, only one affidavit is needed instead of the present two. This will shorten paperwork.

Section 6 of the bill allows a spouse to disclaim what was left to him in a will. On page 17 the sole heir will not have to go through a long accountability.

J. C. WEINGARTNER, State Bar Association, supported the bill.

ADA HARLEN, State Bar of Montana, stated the bill puts some revenue into the state code and brings it into line with the national code.

TOM STOLL, Department of Revenue, stated the present law has not worked well. This would be of some value.

There were no further proponents.

There were no opponents.

SENATOR TURNAGE closed the bill.

REP. HANNAH asked who actually wanted the changes in the bill. ADA replied there are some problems in the state law that need to be revised. Housekeeping changes will allow the ability to use the code as it was intended.

REP. YARDLEY asked if the national codes were not federal law. It was answered correct, the UPC is the work product of the ABA and is a uniform law adopted in many states - not a federal law.

SENATE BILL 43 SENATOR BROWN, chief sponsor, stated this bill's purpose is to shift the burden of proof for suppression of confessions or admissions in criminal cases. EXHIBIT 1 was given to the committee.

The main purpose of the bill is to bring it into agreement with the courts decisions.

C. TWEETEN, Attorney General's Office, stated it is important the statutes are in compliance. He supports the bill.

There were no further proponents.

There were no opponents.

No questions were asked by the committee.

SENATE BILL 75 SENATOR BROWN, chief sponsor, stated this bill is to amend 2-9-303 authorizing district courts to approve compromise settlements against the state. The state has the authority to settle a claim only after is it proven in court. This would amend the court to provide that a hearing could be heard rather than having to come back to another county. It does not involve just a judge writing an order; a hearing has to be held. It makes it fair for the litigants.

MIKE YOUNG, Department of Administration, supports the bill. Currently the case has to be started all over with two judges. Hopefully, this will help the department and the claimants.

There were no further proponents.

There were no opponents.

No questions were asked by the committee.

SENATE BILL 63 SENATOR MAZUREK, chief sponsor of the bill, stated the bill's purpose is to conform the statutes regarding amendment of charges in criminal cases to case law. EXHIBIT 2.

C. TWEETEN, Attorney General's Office, supports the bill.

TOM HONZEL, County Attorneys, supports the bill. This bill would

codify the procedure that the legislature and the supreme court work together.

There were no further proponents.

There were no opponents.

REP. YARDLEY asked if this case was a 1968 case as shown in the exhibit. If it is, why was there such a time lag? The sponsor replied that was a typographical error and it was actually a 1979 case.

That ended the discussion on Senate Bill 63.

SENATE BILL 83 SENATOR MAZUREK, sponsor, stated this bill establishes the crime of failure to return rented personal property. Individuals who operate rental centers rent out all types of equipment from ladders to large expensive equipment. There are experiencing escalating loss with the equipment when it is not returned. The county attorneys have difficulty prosecuting the borrower when merchandise is not returned. It is not possible to charge them under the theft statute because it was not actually theft since an agreement was signed. Because of that difficulty, the only statute available to the county attorney is theft of service, which is a misdemeanor. Someone may rent a $1,000 piece of equipment and be charged with a misdemeanor if it is not returned.

On the contract a notice of return must be indicated in bold print on the agreement. If the person fails to return the equipment, a certified letter is sent indicating he has 48 hours to return the equipment. It is similar to the bad check language.

The offense must be committed purposely and knowingly.

J. C. WEINGARTNER, Montana Rental Association, supports the bill. It is a big problem and this is a way to protect the small businessman. This bill is also protecting the person who forgets to bring the merchandise back by sending them a certified letter.

TOM HONZEL, County Attorneys, supports the bill. The problem the attorneys have is proving the intent of the person to keep the merchandise. This would clarify the situation.

KEN PETERSON stated 10 years ago there were only eight rental agencies in the state. Today there are about 30. It is not the intent of the agencies to sue over a fifty-cent screwdriver,

however, large items have been lost. Recently, a $500 piece of engine removing equipment was rented and never returned. The borrower was traced to be in New York. The company is out of the equipment and has suffered the loss.

There were no further proponents.

There were no opponents.

REP. KEEDY questioned about theft. SENATOR MAZUREK replied it is difficult to prove that theft was the intent.

REP. KEEDY stated written notice containing the date and time is an element of defense, why? SENATOR MAZUREK replied the purpose is to insure that the defendant has knowledge of the time the equipment is to be returned. If it is not in bold print it is not right.

REP. EUDAILY asked if the penalties are in line with the bad check penalties. It was replied no, there are in line with the theft statute.

REP. KEEDY asked about page 1, line 12 purposely and knowingly. SENATOR MAZUREK replied that was at the request of Senator Towe. The concern expressed was if someone could knowingly not return the property. He may not have intended to return it or it may have been stolen from him, or he may have been hospitalized. If he were unable to return it knowingly alone could result in prosecution and conviction; knowingly and purposely would not.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 9:25 a.m.

SENATE BILL 38 REP. SEIFERT moved do pass.

REP. YARDLEY agreed with the motion as it makes it a much more simplified probate law.

The motion carried unanimously.

SENATE BILL 43 REP. CONN moved do pass.

REP. CURTISS thought this was a radical change for one court case. There is a possibility it could be overturned. It was replied that type of case has appeared before the Supreme Court.

The motion of do pass carried with REP. HANNAH voting no.

SENATE BILL 63 REP. SEIFERT moved do pass.

The motion carried unanimously.

SENATE BILL 75 REP. BROWN moved do pass.

The motion carried unanimously.

SENATE BILL 83 REP. SEIFERT moved do pass.

REP. SEIFERT moved to amend line 12, page 1 following "purposely" strike "and" and insert "or". The motion failed.

REP. HANNAH moved the bill have an immediate effective date on passage and approval. The motion carried unanimously.

REP. SEIFERT moved do pass as amended. The motion carried with REP. EUDAILY against the motion.

SENATE BILL 36 REP. SEIFERT moved do pass.

REP. SEIFERT moved the amendments be incorporated with the bill. EXHIBIT 3. The motion carried.

REP. SEIFERT moved do pass as amended. The motion carried unanimously.

The meeting adjourned at 10:20 a.m.

KERRY KEYSER, CHAIRMAN

mr

Exhibit 2

Legislation
CT/bjw

MEMORANDUM

8 January 1981

TO: Senator Joe Mazurek

FROM: Chris Tweeten

RE: SB 63

In State v. Cardwell, ____ Mont. ____, 609 P.2d 1230 (1968), the Montana Supreme Court held that the provision of section 46-11-403(1), MCA, allowing substantive amendments to informations without leave of court, violated Article II, Section 20 of the 1972 Montana Constitution. The Court found that leave of court was a constitutional condition to a substantive amendment of an information and established procedures for complying with the constitutional mandate. 609 P.2d at 1233. SB 63 codifies these procedures.

The major function of leave of court is to assure that the amended charge is supported by probable cause. SB 63 meets this need by requiring the prosecutor to support his amended information with an affidavit stating facts showing the existence of probable cause, and requiring the judge to find probable cause before granting leave to amend. The second procedure established by the Court involves notice. The Court held that a defendant must have sufficient time to prepare for trial and that he must be arraigned on the amended information. New subsections (d) and (e) of section 46-11-403 satisfy this requirement.

The bill provides two other departures from present law. The statute currently allows one substantive amendment without leave of court. It is unclear whether subsequent amendments are permissible with leave of court, since the statute is silent on the matter. The amendment in SB 63 strikes the work "once" from the statute, allowing multiple substantive amendments if the procedures set forth in the statute are followed. This seems reasonable, since the notice procedures and the requirement that the defendant be given a reasonable time to prepare eliminate the possibility of prejudice.

SB 63 also creates explicit authority to amend complaints in justice and city court proceedings. Current section 46-11-403 applies to amending a "charge", whether brought by information, complaint, or, presumably, indictment. Cardwell establishes that special constitutional constraints apply to informations and not complaints. It therefore is proper to limit the Cardwell procedures to informations and provide a separate authorization for amending complaints. Bill Section 2 amends the statute dealing with complaints to allow a complaint to be amended on motion with leave of court at any time before the jury returns its verdict. The defendant's rights are safeguarded in such a case through the leave of court requirement and the availability of a trial de novo on appeal in district court. This approach also conforms with the actual practice followed by most prosecutors in justice and city court proceedings.

The primary purpose of this bill is to give prosecutors and judges some guidance in applying Cardwell. We feel that the existence of an unconstitutional statute on the book only invites confusion. Since the legislature has adopted a criminal procedure code, it should reflect the procedures actually followed.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL 63 Date 3/4/81

SPONSOR Mazurek

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
C Tweeten	Helena	AH & Soc	✓	
Tom Honzel	Helena	County Attys	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33
1-81

SENATE BILL NO. 63

INTRODUCED BY MAZUREK

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM THE STATUTES REGARDING AMENDMENT OF CHARGES IN CRIMINAL CASES TO CASE LAW; AMENDING SECTIONS 46-11-403 AND 46-17-101, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-11-403, MCA, is amended to read:

"46-11-403. Amending the ~~charge~~ information. (1) (a) A ~~charge~~ An information may be amended once in matters of substance at any time not less than 5 days before trial ~~without~~ with leave of court.

(b) When the prosecution seeks leave to amend an information as to a matter of substance, the prosecuting attorney shall file:

(i) a motion for leave to amend stating the nature of the proposed amendment;

(ii) a copy of the proposed amended information; and

(iii) an affidavit in compliance with 46-11-201(1), stating facts sufficient to show the existence of probable cause to support the charge as amended:

(c) If the motion is timely and the amended information is supported by probable cause, the court shall grant leave to amend.

(d) The defendant shall be arraigned on the amended information without unreasonable delay.

(e) The defendant shall have a reasonable period of time to prepare for trial on the amended information.

(2) The court may permit ~~any charge~~ an information to be amended as to form at any time before verdict or finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

(3) No charge ~~shall~~ may be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant."

Section 2. Section 46-17-101, MCA, is amended to read:

"46-17-101. Initiation of proceedings -- amending the complaint. (1) In justices' and city courts, all criminal prosecutions must be commenced by complaint under oath.

(2) The complaint may be amended at any time before verdict or finding with leave of court."

-End-

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